Filed 8/18/15 In re J.M. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.M. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	E062371 (Super.Ct.No. RIJ1300299) OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Anna M. Marchand, Deputy County Counsels, for Plaintiff and Respondent.

Defendant and appellant J.M. (Father) appeals from an order terminating his parental rights as to his two sons, five-year-old J.M. and three-year-old E.M.[1] (Welf. & Inst. Code, § 366.26.)[2] On appeal, Father contends the juvenile court erred in failing to find applicable the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) to termination of parental rights. We reject this contention and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Riverside County Department of Public Social Services (DPSS) in March 2013 after I.G. tested positive for methamphetamine and amphetamine at the time of his birth. Mother admitted to using methamphetamine about three to four days prior to I.G.'s birth. She also admitted to having a history of abusing drugs, and being on a diversion program following her arrest for possession of methamphetamine. I.G. was detained and placed in a foster home.

Father had recently been released from jail on March 7, 2013, after having served about one year for dissuading a witness, and since that time J.M. and E.M. had been in Father's care. Father had also engaged in, and been charged for, domestic violence involving Mother. Father confirmed that he had recently been released from jail and on

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[1] Neither the mother of the children, A.M. (Mother), nor the children's half brother, I.G., are parties to this appeal.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

probation, but claimed that he had been wrongly charged. Father had a criminal history for convictions involving possession of a weapon other than a firearm, possession of marijuana, stolen property, battery on a spouse or cohabitant, criminal gang activity, and vandalism over $400. Father denied beginning his 52-week anger management program as required by his probation but planned to do so once he obtained employment. Father stated that he had previously used marijuana and methamphetamine but had not used for over a year. Father's saliva drug test came back negative at that time but he had tested positive for marijuana on March 19, 2013.

J.M., E.M., and I.G. were removed from Mother's care due to her drug use on March 18, 2013. DPSS allowed J.M. and E.M. to remain in Father's custody.

On March 20, 2013, DPSS filed a petition on behalf of the children pursuant to section 300, subdivision (b) (failure to protect). The children were formally detained the following day at the detention hearing. J.M. and E.M. were placed in Father's home. The social worker recommended that the allegations in the petition be found true; that the children be declared dependents of the court; and that J.M. and E.M. remain in Father's care on family maintenance.

The social worker met with J.M. on April 11, 2013. J.M., who was three years old at the time, reported that he was "being good so he could go home to his mother." J.M. also stated that he liked living with Father. J.M. and E.M. had both adjusted to living with Father.

Father had been referred to services for anger management and substance abuse treatment. However, he failed to participate in drug testing on April 25, 2013, and failed to attend his substance abuse program on April 30, 2013. In addition, Father tested positive for methamphetamine and marijuana on April 15 and May 2, 2013. Because Father had made limited progress in his substance abuse program and had recently started caring for the children, the social worker had concerns as to Father's ability to care for his children. As a result, J.M. and E.M. were removed from Father's care and placed in a foster home.

On May 6, 2013, DPSS filed an amended section 300 petition to include Father's current drug use and failure to participate in his substance abuse program. J.M. and E.M. were formally removed from Father's care on May 7, 2013. Father was provided with services and visitation twice per week for one hour.

Father participated in supervised visits with his children but had to be redirected when he engaged in making promises to the children. He also brought excessive amounts of candy for the children and accused J.M. of lying to him when J.M. explained receiving a bruise from E.M. When confronted about his conduct, Father became very argumentative, upset, and defiant. He refused to decrease the amount of candy he brought for the children and stated he could do whatever he wanted. Additionally, following a visit on May 13, 2013, Father had engaged in a verbal argument with I.G.'s father, and when both fathers went outside, Father took off his shirt in preparation for starting a physical altercation with I.G.'s father.

The jurisdictional/dispositional hearing was held on May 22, 2013. At that time, the juvenile court found the allegations in the amended petition true and declared the children dependents of the court. Father and Mother were provided with reunification services and ordered to participate. The juvenile court also admonished Father for his part in the altercation with I.G.'s father. Father's case plan required Father to participate in counseling services, a domestic violence program, a parenting program, a substance abuse program, and to randomly drug test.

By the six-month status review hearing, Father had obtained a residence and was employed, working in construction. He was able to meet his financial obligations but was unable to afford the 52-week anger management program required by his formal probation. He had, however, completed a parenting program and anger management program required by DPSS. Father had also enrolled in a substance abuse treatment program but continued to provide positive drug test results for marijuana. He claimed that he had obtained a medical marijuana card. In addition, his attendance in the substance abuse program was inconsistent, and his participation was disruptive as he was disrespectful to counselors and fellow participants. Father was terminated from the program because he stopped attending. He was also pictured holding a gun on Facebook.

Father's participation in supervised visits had fluctuated between negative and positive. He continued to bring sweets to every visit, made promises to the children, challenged the visitation guidelines, spoke inappropriately toward the monitoring social worker and Mother, and encouraged the children to fight back if they were hit by another

foster child. He had also fallen asleep while watching a movie with the children and often spoke on his cellular phone during visits. Father, however, was affectionate and attentive toward both his children and had demonstrated skills learned in his parenting program. Nonetheless, at a July 1, 2013 visit, J.M. had spent the last ten minutes of his visit with Father looking out a window and saying he wanted his mother.

I.G. had been placed with his paternal grandmother (caregiver) on September 9, 2013. J.M. and E.M. had continued to live together in a foster home. J.M. exhibited angry behaviors and desired to live with his mother. E.M. appeared to adjust to foster care and was bonded to J.M. and his parents.

At the November 19, 2013 six-month review hearing, the juvenile court continued reunification services for Mother and Father. The court authorized return of the children to Mother's care once deemed appropriate by DPSS. The court also ordered DPSS to provide Father with substance abuse and anger management referrals.

On November 25, 2013, Father was given a referral to complete a hair follicle test. The results of the test found Father positive for methamphetamine, cocaine, and marijuana use. Father failed to participate in random drug testing on December 6 and 16, 2013. Further, Father continued to find it difficult to follow directions during supervised visits. He had refused to wait for the children in the visiting room, instead going to a restricted area in the back parking lot and walking up behind the foster mother as she unbuckled E.M. from his car seat, causing the foster mother to be frightened. He had also used the staff lounge despite a posted restricted sign and being told many times he was

not permitted to walk through the facility or use restricted areas. He was often late for visits and continued to talk on his cell phone during visits.

J.M. and E.M. were returned to Mother's physical custody on December 21, 2013. Unfortunately, however, Mother continued to abuse illegal drugs and failed to comply with her family maintenance services. As a result, the children were removed from Mother's custody on April 30, 2014, and placed in the home of their half sibling's caregiver. On May 2, 2014, DPSS filed a section 387 supplemental petition for a more restrictive placement of the children. The juvenile court formally detained J.M. and E.M. on May 5, 2014.

Father continued to test positive for methamphetamines and marijuana. His drug tests in early 2014 showed higher levels of marijuana and methamphetamine use. Father stated that he was unsure how he was being exposed to drugs and claimed that maybe his associates were giving him drugs without his knowledge. On January 3, 2014, Father was arrested for violating his probation by possessing a butterfly knife. He was released shortly thereafter, and on January 7 began another substance abuse treatment program. Father had been attending his substance abuse treatment program but had a negative attitude and was disruptive, and despite the treatment program, he continued to test positive for marijuana and methamphetamines. On February 3, 2014, Father was arrested, and on February 6, 2014, he was discharged from his substance abuse program for failure to attend and continuing to test positive for drugs. The social worker,

however, was able to get Father reenrolled but strict rules of compliance were imposed upon Father.

After being reenrolled, Father missed the first intake appointment with his substance abuse counselor, and during his second intake appointment on April 14, 2014, Father tested positive for methamphetamines and marijuana. Father tested positive for marijuana and methamphetamine again on April 28 and 29, 2014. On May 13, 2014, Father's drug test results showed only marijuana use. Eventually, due to a May 29, 2014 drug test showing a higher level of marijuana use, Father was again discharged from his substance abuse program. Father did not believe it was fair to discharge him from the substance abuse program because he had a medical marijuana card; however, when the social worker inquired regarding the medical marijuana card, the substance abuse counselor noted that Father had not discussed having a medical marijuana card. Father was unable to provide proof of a medical marijuana card, and later reported that he had a card in the past, but did not have a current one because he lost his wallet and had not been able to recover his identification card. Once he got a new identification card, he would get another marijuana card.[3]

Father's participation in supervised visits was also inconsistent. However, when he did attend, the visits were positive and the children were happy to see him. And, at the end of visits, Father would walk the children back to the car, buckle them in, and give

[3] On June 25, 2014, Father's counsel reported that Father had renewed a medical marijuana card two days prior on June 23.

them hugs and kisses. J.M. had informed a social worker that he wanted to see Father again and wondered when the next time would be.

On May 12, 2014, J.M. stated that he desired to go home to his mother. However, he also reported that if returning to his mother was not possible, he wanted to continue to live with I.G.'s caregiver. J.M. reported that the caregiver had provided him with enough food to eat, clean clothes, and he was not left unattended. E.M. appeared to be happy, healthy, and comfortable in the caregiver's home. The caregiver was willing to adopt all three children and was able to manage J.M. and E.M.'s active and aggressive behaviors. J.M. would talk to the caregiver about his thoughts, feelings, and emotional needs, and the caregiver was able to meet his needs. The caregiver was also working on toilet training E.M., establishing a schedule for him, working with him on picking up his toys, and reading to him nightly.

On June 25, 2014, the juvenile court sustained the allegations in the supplemental petition and formally removed the children from Mother's custody. The court also terminated Mother and Father's services and set a section 366.26 hearing.

In August 2014, Mother gave birth to a daughter. The new baby was placed with the children's caregiver. Mother had not visited J.M. and E.M. since July 28, 2014. Father was living with his girlfriend and their baby, and his cousin, and had reentered the substance abuse program on August 11, 2014, for the fourth time. Father's treatment counselor reported that Father was a "changed" man since reentering the program; he was pleasant, focused, and committed to getting his children back. He had also randomly

drug tested three times with decreasing marijuana levels and a third negative test for all substances. He was participating in a parenting program and showed much improvement over his past conduct "as if he 'grew up.' " Father had also consistently visited his children once a week for one to two hours supervised by the children's caregiver. However, during a visit, J.M. had reported that Father had hit E.M., resulting in a mark on E.M.'s ear. Father believed that the caregiver's husband had caused the injury, and the caregiver thought the redness on E.M.'s ear had been caused by a bug bite.

Furthermore, on October 9 and 14, 2014, while at his substance abuse program, Father threatened to beat up the social worker because he had learned adoption by the caregiver was being recommended as his children's permanent plan.[4] He believed that because he had been attending classes, he should get his children back. Father was discharged from the substance abuse program for the fourth time as a result of the threats.

Father also threatened to harm the caregiver and her husband. As a result, on October 23, 2014, the juvenile court issued a temporary restraining order to protect the caregiver and her husband, the social worker, the children, and the children's half siblings. On November 5, 2014, a permanent restraining order was issued.

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[4] It appears Father was also upset that his children would not be placed with his mother who had been certified for placement on August 27, 2014. Father's mother had contacted the social worker in September and October 2014, and insisted that the children be moved to her home. The social worker explained that she had visited the children approximately eight or nine times over the past 17 months; that it was not in the children's best interest to move them again; and that the children were stable and doing well in the care of their current caregiver and they had formed a close relationship with each other.

Meanwhile, since being placed in the caregiver's home, the children had continued to thrive and flourish and were bonded and emotionally attached to the caregiver. The caregiver had set up a structured environment, such as regular bedtimes, meal times, nap times, and play times, that had helped the children adjust to their new home and their half brother. The caregiver had been proactive in providing for the children's physical and emotional needs, and was committed in providing the children with a permanent home. The caregiver was also willing to allow the parents continued contact with their children. J.M. reported that he wanted to stay with his caregiver and that he liked where he was living and was happy.

The section 366.26 hearing was held on November 5, 2014. At that time, Father testified. In relevant part, Father testified that the children referred to him as "Daddy"; that he had taken his children to the park every day before they were taken into protective custody; and that he had taught them their ABCs, toilet trained them, and instructed them in soccer. He also stated that the children were excited to see him at the supervised visits; that E.M. cried and had tantrums at the end of the visits; and that he had taken J.M. camping in the past and J.M. had inquired as to when they could go camping again. He believed that it would be detrimental to the children to terminate his parental rights because "Nobody is good without a father," it was "not right" for his children to be without a father, and he "need[ed]" them and the children "need[ed]" him. He also stated that the children recognized his mother as their grandmother, and requested that his children be placed with his mother. Following argument, the court concluded that the

beneficial parental relationship exception to adoption did not apply, found the children adoptable, and terminated parental rights.

II

DISCUSSION

Father contends the juvenile court erred in finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude the termination of parental rights. We disagree.

After reunification services are terminated, " 'the focus shifts to the needs of the child for permanency and stability.' " (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).)

" 'Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.' " (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; see § 366.26, subd. (c)(1).) " 'Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.' " (*In re Celine R.*, *supra*, at p. 53.) A statutory exception to the general rule requiring the court to choose adoption exists where "[t]he court finds a *compelling reason* for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B)) because "[t]he

parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Id.*, subd. (c)(1)(B)(i); see *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.)

Father claims that he had maintained regular visitation with the children and "overall" the visits were positive. DPSS argues otherwise, and points to Father's testimony at the section 366.26 hearing wherein he explained he had stopped seeing the children during the past month. The record shows that Father's participation in supervised visits had been inconsistent. He had missed some visits, and was often late for visits. Failure to maintain regular visitation "fatally undermine[s] any attempt to find the beneficial parental relationship exception." (*In re I.R.* (2014) 226 Cal.App.4th 201, 212; see *In re C.F.* (2011) 193 Cal.App.4th 549, 554 ["Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption"].)

Even assuming Father's inconsistent visitation would meet the first prong, he also had to show that his children "would benefit from continuing the relationship" (§ 366.26, subd. (c)(1)(B)(i)), by demonstrating that the relationship "promotes the well-being of the child[ren] to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) This weighty burden requires evidence that "severing the natural parent[-]child relationship would deprive the child[ren] of a substantial, positive emotional attachment such that the child[ren] would be greatly harmed . . . ." (*Ibid.*) "The age of the child, the portion of the child's life spent in the parent's custody, the

'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent[-]child bond." (*Id*. at p. 576.) The parent-child relationship must "promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*Id*. at p. 575.)

The parent-child relationship "exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) "[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent." (*Id*. at p. 1350.) Even a "loving and happy relationship" with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

"The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child's need for a stable and permanent home that would come with adoption." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) "[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact." (*Ibid*.)

"Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction." (*Ibid*.) "[I]t is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; see *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; *In re C.B.* (2010) 190 Cal.App.4th 102, 133-134; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) A juvenile court's finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion. The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence. While the court's determination that the relationship does or does not constitute a "compelling reason" (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) A juvenile court's ruling on whether there is a " 'compelling reason' " is reviewed for

abuse of discretion because the court must "determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and . . . weigh that against the benefit to the child of adoption." (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

Father argues the evidence supports the conclusion that a beneficial parental relationship existed. However, since it is the parent who bears the burden of producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence compels such a finding as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) As the court in *In re I.W.* discussed, the substantial evidence rule is "typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." (*Ibid*.) When, however, the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, "it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the [Father's]

evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding [in Father's favor].' [Citation.]" (*Ibid.*) Accordingly, unless the undisputed facts established the existence of a beneficial relationship as a matter of law, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. (*In re Bailey J., supra,* 189 Cal.App.4th at p. 1314.)

Here, there is no evidence to show the children had a "substantial, positive emotional attachment" to Father. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 299 (*S.B.*).) J.M. was three and a half years old and E.M. was 19 months old when they were removed from Father's care in May 2013. Prior to the removal, Father had spent from March 2012 to March 2013 incarcerated. J.M. and E.M. had been placed in their caregiver's home in April 2014. By the time of the section 366.26 hearing in November 2014, the children had not resided with Father for over 18 months and had resided with their caregiver for almost seven months. The evidence also showed that the children were attached to their caregiver and were thriving in the caregiver's home. Although Father had visited the children, showed his commitment and love to the children, the children were happy and excited to see Father, called him "Daddy," and the visits went well, the evidence regarding Father's visitation in no way showed that he occupied a parental role in the children's lives. Furthermore, Father failed to maintain sobriety for an extended period and failed to benefit from his services. For these reasons, Father never progressed beyond weekly supervised visits.

Even if Father had established the existence of a beneficial parental relationship, he cannot show the juvenile court abused its discretion in regard to the second component of the beneficial parental relationship exception. The ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to the children as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound discretion of the juvenile court. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) " ' "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' " (*Id.* at p. 319.)

Here, Father did not introduce any evidence showing the children would be greatly harmed by the termination of his parental rights. There is no bonding study or other evidence to show the children would experience detriment from permanent separation and termination of parental rights. (Compare *In re Amber M.* (2002) 103 Cal.App.4th 681, 689-690 [the mother presented evidence of a psychologist's bonding study, testimony of a court appointed special advocate, and statements from the child's therapist to show a beneficial relationship]; accord, *In re J.C.* (2014) 226 Cal.App.4th 503, 533-534; *In re C.F.*, *supra*, 193 Cal.App.4th at p. 557.) Rather, the record supports a finding that the benefits and stability the children will receive by being placed with the caregiver outweighed any benefit inuring to the children through continuing their relationship with

Father. The children were strongly bonded to their caregiver, and saw her as their parent. J.M. had reported that he wanted to stay with his caregiver if he could not be returned to his mother. In addition, J.M. spoke with the caregiver about his feelings and needs, and the caregiver was able to meet his needs. The caregiver had provided the children with a structured setting they desired. The caregiver was mutually bonded to the children and was committed to giving them a permanent home. The caregiver was attentive to the children's developmental, educational, and emotional needs, and they looked to her for attention, comfort, and security. There was no evidence to show that the children were deeply upset or always cried following their visits with Father. Instead, the record indicates that the children were attached, happy, and well bonded to their caregiver and that they were thriving in her home. There was no evidence whatsoever that the children would suffer great detriment if parental rights were terminated. Consequently, the juvenile court could reasonably conclude that termination of Father's parental rights would have no detrimental impact on the children.

Father relies on *In re S.B.* (2008) 164 Cal.App.4th 289 to support his position that the children would benefit in continuing his parent-child relationship with them. In that case, the father had been the child's primary caregiver for three years. (*Id.* at p. 298.) The father contested the termination of his parental rights following the removal of the child due to both parents' substance abuse. During the reunification period, the father had visited the child three times per week, and the child became upset when her visits with the father ended. (*Id.* at p. 294.) The child stated that she wanted to live with the

father, and the child told the father that she loved him and missed him. (*Id* at p. 295.) During visits, the father had " 'demonstrate[d] empathy and the ability to put himself in his daughter's place to recognize her needs.' " (*Id.* at p. 294.) A bonding study had been conducted, and the doctor concluded that "there was a potential for harm to S.B. were she to lose the parent-child relationship." (*Id.* at p. 296.) The social worker even admitted that there would be "some detriment" to the child if parental rights were terminated. (*Id.* at p. 295.) The juvenile court found that the father and the child had "an emotionally significant relationship . . . ." (*Id.* at p. 298.) The appellate court held that under the circumstances, the juvenile court had erred by finding that the beneficial parent-child relationship exception did not apply. "The record shows S.B. loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that S.B. would be greatly harmed by the loss of her significant, positive relationship with [her father]. [Citation.]" (*Id*. at pp. 300-301.)

There is no similar evidence in this case. The child's clear desire to live with the parent in that case is not present here. Although the children enjoyed their visits with Father and there is evidence in the record to suggest a bond between the children and Father, there is little evidence that the children shared the kind of affection for Father that the child expressed for her father in *In re S.B.* More importantly, in contrast to S.B.'s expressed desire to live with her father, J.M. had indicated to the social worker that he

wanted to live with his caregiver if he was unable to return to his mother. Because of the factual differences between this case and *In re S.B.*, that case is not controlling here.

Furthermore, "*S.B.* is confined to its extraordinary facts. It does not support the proposition a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact." (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 558-559.) "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Here, there is some evidence to show that the children generally enjoyed their visits and contacts with Father and that Father desired custody of the children. "But this is simply not enough to outweigh the sense of security and belonging an adoptive home would provide." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81 (*Helen W.*).) In *Helen W.*, the appellate court held that the parent-child relationship exception did not apply, even though the children referred to the mother as " 'Mom,' " the mother and the children loved each other, and the mother provided for the children's needs during visits. (Id. at p. 81; accord, *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 424-425.) In this case, the

benefit the children will receive from a stable home with a caregiver, with whom they already have a positive relationship and who meets their needs, outweighs the benefit the children might receive from maintaining a relationship with Father.

For the foregoing reasons, and based on our review of the entire record, we conclude the juvenile court properly determined that the beneficial parental relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i), did not apply.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.